

## STATE OF RHODE ISLAND

## COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH  
AND FAMILIES

v.

WARWICK SCHOOL DEPARTMENT  
(In re: Student JB)**INTERIM ORDER**

On June 2, 2015, the Department of Children, Youth and Families (“DCYF”) filed a Motion for Interim Order for Residency Determination Pursuant to R.I.G.L. 16-64-6 in this matter. On June 10, 2015, we issued an Order to Show Cause as to why the Warwick School Department (“Warwick”) should not be responsible for the payment of its per-pupil special education cost to DCYF with regard to the placement of JB in a residential facility pursuant to R.I.G.L. 16-64-1.3. By agreement of the parties, a hearing was scheduled for June 12, 2015.

At the show-cause hearing, DCYF presented evidence of a March 26, 2015 Family Court order granting the request of DCYF and JB’s court-appointed advocate that JB be placed at the Whitney Academy in Massachusetts.<sup>1</sup> Subsequently, DCYF filed a motion to vacate the placement order and Warwick filed a motion to intervene. Absent any objection, the Family Court granted Warwick’s motion to intervene. Following hearing, the Family Court denied the motion to vacate. On June 1, 2015, the Family Court ordered, in part, that JB’s placement at Whitney Academy “proceed forthwith, with no further delay,” and that JB “not be unattended in the general community, including [a Warwick] High School.” [Petitioner’s Exhibit 3].

Additional motions were filed in the Family Court by DCYF and Warwick. On June 11, 2015, the Family Court, in part, the respective motions of DCYF and Warwick to stay the placement order and ordered DCYF “to immediately pay the expense of educating JB at Whitney Academy without limitation on DCYF’s right to recover that expense from Warwick in another proceeding.” [Petitioner’s Exhibit 3]. The Family Court’s order has been appealed to the Rhode Island Supreme Court and is currently pending review.

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<sup>1</sup> The Court found that there was no facility in Rhode Island available to meet JB’s clinical needs.

At the hearing herein, DCYF established that JB is a child with a disability and that Warwick is JB's city of residence for purposes of this proceeding. Accordingly, DCYF requests that the Commissioner issue an interim order finding Warwick financially responsible for JB under §16-64-1.1(c) pending full hearing of this matter so that DCYF may move forward with the placement at Whitney Academy. DCYF asks that the Commissioner direct the General Treasurer to withhold the per-pupil special education cost from Warwick's funding and transmit the funds directly to DCYF.

Warwick raises numerous objections to DCYF's request. It argues that there is no need for an interim order in light of the Family Court's order that DCYF pay the expense of educating JB at Whitney, that Warwick is precluded by federal and state law from paying for JB's education at Whitney because the placement was not determined by an individualized education program (IEP) team to be the least restrictive environment for JB which is required to ensure that he receive a free appropriate public education (FAPE), and that the Commissioner of Education is precluded by procedural and substantive provisions of federal and state law from ordering Warwick to fund JB's placement at Whitney. Warwick presented JB's current IEP, effective from December 18, 2014 to December 18, 2015, which provides for educational services in a "special class integrated in a school district building" [School Committee Exhibit 1]. Warwick asserts that the IEP could be implemented by transporting JB to and from Whitney Academy. Otherwise, Warwick contends, DCYF must be financially responsible for JB's educational services at Whitney.

JB's educational advocate took the position that children in DCYF custody have their placements handled by DCF and the Family Court, and that the educational goals and objectives of these children are to be met in these placements.

As of this date, the Family Court order to place JB at Whitney Academy remains in effect. The order states that JB's placement is to "proceed forthwith, with no further delay." We consider DCYF's motion herein to be a delay. The Family Court order is clear, and the Commissioner gives full faith and credit to Family Court orders. We cannot countenance lack of compliance with a Family Court order. Furthermore, §16-64-1.1 refers to children "placed" by DCYF in residential facilities. The statute therefore provides for residency-related determinations by the Commissioner after the DCYF placement has occurred. Finally, as we noted in a

decision issued last year involving a DCYF placement,<sup>2</sup> a child's health and safety needs assume top priority. Rights under federal and state disabilities laws must be accommodated with the health and safety needs of the child.

In the future, the Commissioner of Education will not entertain requests for residency determinations for funding purposes prior to the placement of a child in a residential facility unless the Family Court specifically directs the Commissioner to do so. Residential placements must be made to suit children's needs, not agency budgets. Financial arrangements can be sorted out after a needed placement is made. The health and safety of children must be addressed first.

To avoid additional delay in JB's case, we will proceed with the statutory task at hand. It is undisputed that Warwick is the city of residence for purposes of financial and educational responsibility under §16-64-1.1(c). It also is undisputed that JB is being placed at Whitney Academy for non-educational reasons. We explained the process for this type of placement in our 2014 decision in *DCYF v. Foster-Glocester/RIDE*. DCYF, as the "public agency" making the placement, must initiate and conduct a meeting to develop an IEP for JB at Whitney in accordance with the requirements of the Board of Education's Regulations Governing the Education of Children with Disabilities §§300.320 through 300.324.<sup>3</sup> As an entity having knowledge or special expertise regarding the child, the Warwick School Department needs to be invited to the IEP meeting.<sup>4</sup> The IEP team also needs to include the child's parents, guardian or advocate.<sup>5</sup> The duly-constituted IEP team must develop an IEP that is appropriate for the circumstances of BP's court-ordered placement at Whitney Academy.<sup>6</sup>

We need not reach Warwick's arguments regarding JB's placement at Whitney at this time because an educational placement for JB has not yet been determined. Similar to the child in the *DCYF v. Foster-Glocester/RIDE* case, the current plan is to place JB in an out-of-state residence. Federal and state education laws and regulations do not apply to the Family Court's

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<sup>2</sup> *Department of Children, Youth and Families v. Foster-Glocester Regional School District/Rhode Island Department of Education*, Case 009-14, July 7, 2014.

<sup>3</sup> See Section 300.325 of the Board's Regulations Governing the Education of Children with Disabilities.

<sup>4</sup> Section 300.321(a)(6).

<sup>5</sup> Section 300.321(a)(1). The child's parents/guardian/advocate may challenge the proposed IEP if they do not believe it to be appropriate.

<sup>6</sup> In the future, DCYF must promptly convene the IEP-development process upon agreeing to or learning of a non-educational placement for a child with a disability in a residential facility. If the school department of the city or town which DCYF believes is the child's residence declines the invitation or refuses to participate in the IEP-development meeting described above, DCYF can then invoke the residency-determination procedure set forth in chapter 64 of Title 16. In doing so, however, DCYF may not delay the residential placement of the child pending the result of the Commissioner's residency determination.

placement of a child for non-educational reasons. As discussed above, federal and state laws and regulations will apply to the IEP-development process that DCYF must conduct with regard to JB's new living arrangement at the Whitney Academy.

Under §16-64-1.2(d), Warwick has been identified for purposes of "prima facie evidence of [the] parents' residence in the city or town and/or the city or town's financial responsibility for the child's education as provided in §16-64-1.1." The statute further states that

Pending any final decision under §16-64-6 that a different city, town or agency bears any financial responsibility, the commissioner shall be authorized to order the general treasurer to deduct the amount owed from the designated community's school aid and to pay this amount to DCYF.

We shall enter such an order pending full hearing and final decision with regard to financial responsibility. But first, DCF, absent any judicial intervention, must place JB at the Whitney Academy "forthwith, with no further delay" and initiate the process to develop an IEP for JB that is appropriate for his placement at Whitney.

We hereby order on an interim basis pending full hearing of this matter:

1. DCYF shall comply with the Family Court order currently in effect with regard to the placement of JB.
2. DCYF shall immediately initiate the IEP-development process for JB per §300.325(a) of the Board's Regulations Governing the Education of Children with Disabilities.
3. The Department of Education shall prepare an order for the Commissioner directing the General Treasurer to deduct Warwick's per-pupil special education amount from Warwick's school aid to be paid to DCYF in connection with JB's placement in a residential facility.
4. The hearing in this matter shall reconvene at the appropriate time to consider in full the arguments of the parties and to proceed to a decision on the issues raised by those arguments.

Approved:

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Paul E. Pontarelli, Hearing Officer

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David V. Abbott, Acting Commissioner

June 16, 2015